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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1021 of 2001
in
SPECIAL CIVIL APPLICATION No 6397 of 1999
with
CIVIL APPLICATION NO. 10627 OF 2001
in
LETTERS PATENT APPEAL NO. 1021 OF 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M/S, MODERN CATERERS
Versus
SAIYED IQBAL

Appearance:
1. LETTERS PATENT APPEAL No. 1021 of 2001
MR SN SOPARKAR with MITUL K SHELAT for Appellant No. 1
MR YF MEHTA for Respondent No. 1
MR PRASHANT G DESAI for Respondents No. 2-4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision:11/10/2001

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. This Letters Patent Appeal has been preferred against the order of the Learned Single Judge dated 17-08-2001 passed in Special Civil Application No. 6397 of 1999 whereby the Petition preferred by the Original Petitioner (Respondent No. 1 herein) has been allowed with certain directions made to the Municipal Corporation of Ahmedabad and its Authorities (respondents Nos. 2 to 4 herein).

#. The appellant (Original Respondents Nos. 4, 5 and 6) in the name and style of Messrs. Modern Caterers is carrying on their business of running a Restaurant on plot of land admeasuring 1637 sq. yards granted to it by the Corporation on lease in Ellisbridge area near Municipal Garden called Motilal Park popularly known as Law Garden. The land was leased to the present appellant initially for a period of ten years in the year 1978 and was renewed for a further period of ten years ending on 17-10-1998.

#. On the recommendations of the Municipal Commissioner, the Standing Committee Resolution dated 2-7-1999, which was approved by the General Board of the Municipal Corporation, the lease in favour of the appellant was further renewed for a period of ten years on increased monthly rent of Rs. 25,000/- plus taxes subject to the condition of effecting changes to the superstructure of the Restaurant as per the plans prepared by the architect in consultation with the Engineer of the Corporation.

#. The original petitioner (Respondent No. 1) challenged the grant of renewal of lease of the plot of land to the appellant inter alia on the ground that much higher offers of the petitioner and other parties with much more profitable conditions for the Corporation were ignored and an arbitrary decision was taken to renew the lease in favour of the appellants only because they have been carrying on business on the land for the past 20 years.

#. The learned Single Judge quashed the decisions/resolutions of the Corporation by coming to the

conclusion that the Authorities of the Corporation acted against its own interest and much higher rent could be obtained for grant of lease of a plot of land in prime locality of Ahmedabad. According to the learned Single Judge, merely because the appellants occupied the land for lease for long period of 20 years, the lease could not be renewed by applying the formula of increase of rent by seven times, as was done in the case of other leasehold properties of the Corporation located in different areas. The learned Single Judge in setting aside the decisions/resolutions of the Corporation and its Authorities placed reliance on the decision of the Supreme Court in the case of Tata Cellular vs. Union of India AIR 1996 SC 11 and particularly on a passage quoted in it from the decision in the case of Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation 1947(2) All ER 680.

#. After setting aside the decision of the Authorities of the Corporation and formal resolution passed thereon by the Corporation, the learned Single Judge made the following directions:-

"16. The Petition is accordingly allowed in the following terms:-

(i) The decision of the respondent-Ahmedabad Municipal Corporation to renew the lease in favour of respondent No. 4 for the land admeasuring 1637 sq. yards with construction thereon in Final Plot No. 430 in T.P. Scheme No.3 situated at Motilal Park, popularly known as the Law Garden is hereby quashed and set aside. Since no lease deed is executed by the respondent Corporation in favour of respondent No. 4, no directions are required in that behalf.

(ii) Respondent No.1-Ahmedabad Municipal Corporation shall invite public offers for the aforesaid property mentioning therein not only the duration of the lease but also the conditions, if any, for carrying out any construction/renovations as per such plans as may be suggested by the respondent Corporation. Such public notices shall be issued latest by 30-09-2001, in all the four leading newspapers published from the the City of Ahmedabad i.e.. Gujarat Samachar, Sandesh, Times of India and Indian Express.

(iii) Considering the fact that respondent No.4 had offered to pay Rs. 25,000/- plus taxes as rent and also had agreed to incur the expenditure for carrying out the renovation/construction as

suggested by the Architect Mr. Kamal Mangaldas, against which respondent No.4 has not spent any amount so far, but used and occupied the property in question all throughout, it would be just and proper to hold that respondent No.1 Corporation is not required to refund the amount paid by respondent No.4 to the Corporation at the rate of Rs. 25,000/- per month plus taxes for the period till 30-09-2001.

(iv) In case respondent No.4 does not vacate the premises in question by 30.9.2001, respondent No. 4 shall pay the Ahmedabad Municipal Corporation the difference between the amount which may be determined as the rent amount pursuant to the tender exercise to be undertaken by the Corporation and Rs. 25,000/- (plus the Municipal taxes on such difference) as the amount of compensation for the use and occupation of the property in question from 1-10-2001 till the date of its eviction, if respondent No. 4 submits its offer in response to the public notice and its offer is not accepted; or if respondent no.11 does not submit any offer."

#. Learned counsel Shri S.N. Soparkar for the appellant firstly made a very strenuous effort to persuade us to interfere with the decision of the learned Single Judge. It was contended that in exercise of powers of judicial review the learned Single Judge could not have substituted his own decision in the matter of grant of lease and fixation of its terms. The contention advanced is that in the matter of disposal of property of the Corporation various relevant factors are required to be taken into consideration besides the interest of public revenue. In the discretionary power of the Corporation which was exercised in accordance with law, the Court could not have interfered and fixed its own terms for disposal of land on lease.

#. So far as the first submission made on behalf of the petitioner is concerned, we have also heard the learned counsel Shri Y.F. Mehta appearing for the original petitioner (respondent no.1 herein) and Shri Prashant Desai, Standing Counsel appearing for the Municipal Corporation of Ahmedabad and its Authorities (Respondents Nos. 2 to 4). After considering their submissions and on perusal of the judgment of the learned Single Judge we find that interference has been made by the Court on settled principles which determine the scope of judicial review in the administrative decisions of local authority. The learned Single Judge has taken note of

the fact that regardless of the much higher offers of various parties for obtaining the plot on lease, merely on the ground that the appellant was sitting on the land for long 20 years, on applying formula of seven times increase of existing lease money, the lease was renewed much to the detriment of the interests of the Corporation and more particularly its revenue.

#. The learned counsel for the petitioner then alternatively submitted that so far as the direction made in Sub paragraph (iv) of Paragraph 16 of the impugned order of the learned Single Judge is concerned, he has directed the appellants to vacate the land by 30-09-2001 and on their failure to do so, it is directed that they would pay the lease money equivalent to the highest offer for the plot of land to be granted on lease which is received pursuant to the invitation of public offers.

##. On the alternative submission we also heard the counsel appearing for the original petitioner and the Authorities of the Corporation. After considering their submissions and on perusal of the directions contained in Sub paragraph (iv) of Paragraph 16, in our considered opinion, the learned Single Judge has to some extent exceeded the power of judicial review. Having held that the decision of Authorities of the Corporation contained its formal resolutions was unfair and arbitrary, the learned Single Judge ought to have left the matter to the Municipal Corporation to dispose of the plot by inviting public offers to obtain the highest competitive price. The learned Single Judge even after setting aside the decision of the Corporation could not have issued directions in the Petition so as to interfere with the legal rights and obligations of the appellant as lessee and the Corporation as lessor. The learned Single Judge has taken note of the fact that even on expiry of lease the lessee can be evicted only by summary procedure under the provisions of Public Premises Eviction Act. The rights and obligations of lessor and lessee are regulated by the terms of the lease and the general law applicable to the lease transaction in question. The above legal rights and obligations of Corporation and the appellant could not have been interfered with by the learned Single Judge by issuing direction in sub clause (iv) of Paragraph 16 to the effect that any further continuance in occupation of the plots by the appellant beyond 30-09-2001 would be on payment of lease money at the highest rate offered on public invitation. The learned Single Judge lost sight of the fact that making of offers pursuant to public invitation, and the genuineness of such offers are amongst several imponderable factors and

uncertain events which could not be allowed to regulate the rights of the appellants as lessee in occupation of land on expiry of its period of lease and the Corporation as the lessor. To that extent in our considered opinion, the learned Single Judge exceeded his power of judicial review. In the case of Tata Cellular (supra) on which the learned Single Judge placed reliance, the Supreme Court has determined the scope of judicial review in administrative action. It has reinforced the settled principle that judicial review can be sought for the purpose of examination of fairness and non-arbitrariness of the decision. Judicial review is sought against the decision-making process. It is not a review or appeal against the decision itself. If the decision taken by the Corporation has been found to be unfair and against its own interests as well as the interest of the intending offerers, the learned Single Judge is justified in quashing the decision of the Corporation to grant renewal of the lease; but the Corporation as lessor and the appellants as lessees of the plot of land in dispute should have been left to work out their rights and remedies in accordance with the terms of the lease deed and law applicable to the transaction.

##. For the aforesaid reason, we uphold the decision of the learned Single Judge to the extent of the directions contained in Sub paragraphs (i) to (iii) of Paragraph 16 but partly allow the Appeal by quashing the direction of the learned Single Judge contained in Sub paragraph (iv) of Paragraph 16 (quoted above).

direct the parties to bear their own costs.

In view of the fact that the period fixed for carrying out various directions of the learned Single Judge is already over, the said period in directions in Sub paragraphs (ii) and (iii) in Paragraph 16 is extended upto 30-11-2001.

The Civil Application stands accordingly disposed of.

(D.M. DHARMADHIKARI, C.J.)

(RAVI R. TRIPATHI, J)

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